In the Supreme Court of the United States.

OCTOBER TERM, 1909.

THE UNITED STATES, APPELLANT,
v.
OBERLIN M. CARTER, LORENZO D. CARTER, I. Stanton Carter, Horace G. Stone, Nathaniel C. Sears, The International Audit Company, Robert Nelson, and Lyman E. Cooley, appellees. } No. 551.

OBERLIN M. CARTER ET AL., APPELLANTS,
v.
THE UNITED STATES, APPELLEE. } No. 552.

APPEAL AND CROSS-APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

MOTION TO ADVANCE.

On behalf of the United States the Solicitor-General moves the Court to advance the hearing of the appeal and cross-appeal in the above-entitled cause, for the following reasons:

1. The bill was filed by the United States as complainant in the Circuit Court of the United States for the Northern District of Illinois August 27, 1901, for the purpose, among other things, of subjecting to the claims of the United States as-

sets held by Oberlin M. Carter and his agents in that district, and charged to be investments made with, and proceeds of, trust funds alleged to have been diverted, through the conspiracy and fraud of Oberlin M. Carter, Benjamin D. Greene, John F. Gaynor, and others, to the use of Oberlin M. Carter from public moneys of the United States intrusted to said Oberlin M. Carter for river and harbor improvements.

Under this bill a large amount of assets has been tied up on mesne process to await the final decree in the cause.

2. Similar bills have been filed by the United States against Oberlin M. Carter and his agents in the Circuit Courts of the United States for the Southern District of New York, the District of New Jersey, the Southern District of West Virginia, the Southern District of Georgia, and the Southern District of Illinois; and large amounts of assets are tied up in those districts on mesne process to await the final decrees in those causes.

3. By stipulation of the parties (Rec., 119), it was agreed that the issue as between the United States and Oberlin M. Carter as to the fraudulent diversion of funds intrusted to him, into assets as charged in complainant's bills pending in the several districts, should be brought to final decree first in the Circuit Court of the United States for the Northern District of Illinois, and that the final decree of that court, unless reversed on appeal, shall be conclusive on all questions determined

therein, and shall be made effective by appropriate decrees upon the bills in other districts if that is deemed necessary by either party.

The value of the aggregate assets tied up on mesne process under the bills in the several districts is very nearly a half million dollars.

4. The cause in the said Circuit Court for the Northern District of Illinois went to final decree at the December term, 1907. Both parties appealed to the Circuit Court of Appeals for the Seventh Circuit. The cause went to final decree in the said Circuit Court of Appeals on March 18, 1909. By said decree all the assets tied up as aforesaid in the Northern District of Illinois and in the five other districts were held to have been traced as investments and proceeds of the trust fund so diverted, and were awarded to the United States, subject to allowances therefrom aggregating some $70,000 for fees to counsel for Oberlin M. Carter in defense of this suit, and for other allowances to Oberlin M. Carter for his maintenance and for alleged expenses incurred in defense of his suit by said Carter and his counsel, aggregating some $28,000.

5. The United States appealed to this court from the decree of said Circuit Court of Appeals so far as it made said allowances.

Oberlin M. Carter and other persons affected took a cross-appeal to this court from the decree of the Circuit Court of Appeals on the general merits.

6. The fundamental question of the guilt of Oberlin M. Carter of conspiracy and fraud with Benjamin D. Greene and John F. Gaynor, which is the basis of the right of the Government to recover the assets claimed as investments of the diverted trust funds, and awarded to the United States by the Circuit Court of Appeals, has been passed upon heretofore by numerous courts, notably in the following proceedings:

Verdict of guilty by general court-martial. Reviewed by Attorney-General Griggs and affirmed by President McKinley September 29, 1899. See *Carter Case* (22 Opin. Atty. Gen., p. 589).

Reviewed by the Supreme Court of the United States and sentence affirmed on habeas corpus. *Carter* v. *McClaughry* (183 U. S., 365).

Trial of Benjamin D. Greene and John F. Gaynor on indictment for conspiracy and fraud, with Oberlin M. Carter. Verdict of guilty, April 12, 1906, in the United States District Court, Southern District of Georgia. *United States* v. *Greene et al.* (146 F. R., 803).

Reviewed and affirmed by Circuit Court of Appeals, Fifth Circuit. *Greene et al.* v. *United States* (154 F. R., 401, 414).

Petition of Greene and Gaynor for certiorari denied by United States Supreme Court. *Greene et al.* v. *United States* (207 U. S., 596).

Decree in the present civil suit by the United States Circuit Court for the Northern District of Illinois (Rec., 358–383).

Reviewed by United States Circuit Court of Appeals in the present case, from whose decree on the merits Carter's cross-appeal is taken, and in whose opinion it is stated (Rec., 13426): "We are constrained to the belief that the evidence is decisive, not only of fraud perpetrated by the contractors, but of concurrence and participation therein by Captain Carter."

7. The further disposition of the suits in six different districts and the economical handling and disposition of a large amount of assets are necessarily delayed until a determination of the appeal and cross-appeal in this cause.

If advancement be allowed, a day not earlier than January 1, 1910, is most respectfully suggested, in order that briefs may be adequately prepared after printing of the record.

LLOYD W. BOWERS,
Solicitor-General.

OCTOBER, 1909.

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